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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/618,698	07/15/2003	Yoshiaki Oshima	1422-0595P	4920

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EXAMINER	
MARCHESCHI, MICHAEL A	
ART UNIT	**PAPER NUMBER**
1755	

DATE MAILED: 07/28/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/618,698	OSHIMA ET AL.	
	Examiner	Art Unit	
	Michael A. Marcheschi	1755	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *23 May 2005* .

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-7* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-7* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☒ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11)☐ The proposed drawing correction filed on _____ is: a)☐ approved b)☐ disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12)☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

13)☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☒ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☒ Certified copies of the priority documents have been received in Application No. *10/218,601* .

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

14)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

a) ☐ The translation of the foreign language provisional application has been received.

15)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) *7/14/05* .
4) ☐ Interview Summary (PTO-413) Paper No(s). _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other:

The disclosure is objected to because of the following informalities:

The disclosure is objected to because it does not contain the continuing data as required (applicants must also include the status of the parent application (patent number) in said continuing data). The examiner acknowledges that the transmittal included the continuing data, but the specification must be amended according to the new rules.

Appropriate correction is required.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 1-7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Grumbine et al. for the same reasons set forth in the previous office action which are incorporated herein by reference.

Claims 1-7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Miyata for the same reasons set forth in the previous office action which are incorporated herein by reference.

Claims 1-7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kaufman et al. for the same reasons set forth in the previous office action which are incorporated herein by reference.

Claims 1-7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lee et al. in view of Grumbine et al. for the same reasons set forth in the previous office action which are incorporated herein by reference.

Claims 1-7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tsuchiya et al. in view of Ohashi for the same reasons set forth in the previous office action which are incorporated herein by reference.

Claims 1-7 are rejected under 35 U.S.C. 103(a) as being unpatentable over WO 01/12740 in view of Grumbine et al. for the same reasons set forth in the previous office action which are incorporated herein by reference.

Claims 1-7 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1, 5 and 13-16 of copending Application No. 10/726,581 for the same reasons set forth in the previous office action which are incorporated herein by reference.

Claims 4-7 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over all the claims of copending Application No. 10/857,841 for the same reasons set forth in the previous office action which are incorporated herein by reference.

Claims 1-7 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over all the claims of copending Application No. 10/727,571 for the same reasons set forth in the previous office action which are incorporated herein by reference.

Claims 1-7 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims all the claims of copending Application No. 10/753,460 for the same reasons set forth in the previous office action which are incorporated herein by reference.

Applicant's arguments filed 5/23/05 have been fully considered but they are not persuasive.

Applicants argue that none of the (primary) references (Grumbine et al., Miyata, Kaufman et al., Lee et al., Tsuchiya et al. and WO 01/12740) teach the acids as now claimed. The examiner acknowledges applicants argument but this is not persuasive because all of the references teach phosphoric acid and although the claimed acids might not be **literally** defined, at least one of the claimed acids is encompassed by the teaching of "phosphoric acid", in general, because "**a generic disclosure (of phosphoric acid) renders a claimed species claimed species of phosphoric acid) prima facie obvious.** ***Ex parte George*** **21 USPQ 2d 1057, 1060 (BPAI 1991);** ***In re Woodruff*** **16 USPQ 2d 1934;** ***Merk & Co. v. Biocraft Lab. Inc.*** **10 USPQ 2d 1843 (Fed. Cir. 1983);** ***In re Susi*** **169 USPQ 423 (CCPA 1971).** In addition, Kaufman et al. and Grumbine et al. disclose that at least one oxidizer can be used and a persulfate is listed as one of the oxidizers. Since instant claim 1 in lines 3 and 5 defines that a salt of the acid (persulfuric acid) can be used and the references teach that the composition can contain a mixture of oxidizers, one being a **persulfate, no patentable distinction is seen to exist because the same salt is used.** In addition, the WO reference teaches that the composition can contain a mixture of oxidizers, one being a persulfuric acid, thus **no patentable distinction is seen to exist**

because the same acid is used. In addition, since instant claim 1 in lines 3 and 5 defines that a salt of the acid (pyrophosphoric acid) can be used and the reference teaches that the composition can contain pyrophosphate**, no patentable distinction is seen to exist because the same salt is used.**

Applicants argue the ODP rejections in that that none of the references teach the acids as now claimed. The examiner acknowledges applicants argument but this is not persuasive because all of the references claim compositions that contain an acid and this broadly encompassed the claimed acids. To find a definition of the acid, one can turn to the specification for a definition and the definition defined by 10/726, 581, 10/727,571 and 10/753,460 is the claimed acids. With respect to 10/857,841, the claims define an acid having the claimed pK1 value and this makes the claimed acids obvious because they fall within this category.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Evidence of unexpected results must be clear and convincing. *In re Lohr* 137 USPQ 548.

Evidence of unexpected results must be commensurate in scope with the subject matter claimed.

In re Linder 173 USPQ 356.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael A. Marcheschi whose telephone number is (571) 272-1374. The examiner can normally be reached on M-F (8:00-5:30) First Friday Off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jerry Lorengo can be reached on (571) 272-1233. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

7/26/05
MM

Michael A Marcheschi
Primary Examiner
Art Unit 1755